

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 13-109

MICHAEL MERRITT
December 4, 2013

WHEREAS, Michael Merritt ("Merritt"), requested a hearing to contest the proposed disciplinary action initiated against him on April 8, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-035; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Merritt's request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby issues to Merritt a three calendar day suspension of his occupational license in the above-referenced case in the matter of DC-13-035; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

BEFORE THE MISSOURI GAMING COMMISSION

In Re: Michael Merritt

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Case No. 13-035

License Number: 150218

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon receipt of an undated letter received May 7, 2013 making a request for a hearing by Michael Merritt (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated April 8, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on November 1, 2013 where the Petitioner and the Commission's attorney, Mr. Christopher Hinckley, appeared to present evidence and arguments of law.

FINDINGS OF FACT

1. On September 29, 2012, Petitioner was employed by Harrah's Casino St. Louis ("Company") as a Security/Risk & Safety Manager aboard the *Harrah's St. Louis* ("Casino").
2. On October 5, 2012, Trooper Mark Albright ("Tpr. Albright") of the Missouri State Highway Patrol was contacted by Sergeant Charles Easley in regards to an employee accepting a tip from a patron.
3. On September 29, 2012, Tpr. Albright was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. Albright's investigation and review of surveillance video recordings revealed the following:
 - a) On September 29, 2012 at approximately 10:15 p.m., Security Officer LaRon Jones ("Jones") was positioned on a fixed post at the Mardi Gras entrance to the gaming floor..
 - b) At 10:32 p.m., an unidentified patron entered the turnstile and approached Jones.
 - c) At 10:33 p.m., the patron gave Jones St. Louis Rams tickets and Jones accepted them.

- d) At 11:17 p.m., Jones contacted the grave shift Security Supervisor Adam Hancock and told Hancock that a guest gave him the football tickets. Hancock informed Jones that he should not have accepted the tickets from the patron because security employees cannot accept gifts from patrons.
- e) At 11:18 p.m., Jones and Hancock entered swing shift Security Supervisor James Walsh's office and told him about the tickets Jones accepted from the patron.
- f) On September 30, 2012, at the beginning of his shift the next day, Walsh sent an email to his direct supervisor, Security Shift Manager Ken McConnell informing him of the incident involving Jones and the Patron.
- g) McConnell learned of the incident involving Jones and the tickets on October 2, 2012 when, upon returning to work after being off from work on September 30 and October 1, he opened Walsh's September 30 email.
- h) On October 2, 2012, McConnell forwarded Walsh's email about the incident to Petitioner. Petitioner received and read Walsh's original email on the same day - October 2, 2012.
- i) On October 2, 2012, the Petitioner contacted surveillance to secure coverage of the incident.
- j) On October 3, 2012, the Petitioner contacted the human resources department and learned that Jones had read and acknowledged the company's policy prohibiting security employees from accepting patron gifts.
- k) On October 4, 2012 at approximately 3:30 p.m. the Petitioner met with Jones upon his arrival at work and informed Jones that he was being terminated because he accepted a gift from a patron.
- l) Shortly after meeting with Jones, Petitioner contacted Regulatory Compliance Manager Jeff Hendricks and informed Hendricks about Jones's termination. The Petitioner then told Hendricks that "we need to report this to Missouri Gaming."
- m) On October 4, 2012, Hendricks sent an email to Sgt. Easley of the Highway Patrol's Gaming Division, informing him of Jones's termination and the reason for his termination - that Jones had accepted a gift of football tickets from a patron.

- n) Sgt. Easley read Hendricks's email regarding the incident and Jones's termination on the morning of October 5, 2012.
5. Petitioner admitted that the MGC boat agent on duty was not notified promptly.
6. Petitioner's actions or inactions in failing to promptly notify the MGC of an incident involving a security officer accepting a gift from a patron discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2012), Section 313.812.14(1), (2), & (9), RSMo. (2012), 11 CSR 45-4.260(4)(E), (F), & (Q); 11 CSR 45-10.030(1); and the Commission's Minimum Internal Control Standards ("MICS") Chapter N §1.02 and §2.01.

CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2010.
2. "A holder of any license shall be subject to the imposition of penalties, suspension, or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order, and general welfare of the people of the state of Missouri; or that would discredit or tend to discredit the Missouri gaming industry of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state, or local law or regulation." Section 313.812.14 MO. REV. STAT. 2012.
3. "The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).
4. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex. rel. Department of Social Services v. Stone*, 71 S.W.3d 643, 646 (Mo. App. 2002).
5. "The state has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the

Commission's power to regulate riverboat gaming operations in the state must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).

6. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. 11 CSR 45-10.030(1) states "Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission of rule committed by licensees, their employees or others..."
9. The Commission's MICS, Chapter N §1.02, states: Security personnel are not allowed to accept tips, gratuities or gifts of any kind from a patron."
10. The Commission's MICS, Chapter N §2.01, states: "Security personnel shall promptly report to the MGC boat agent on duty any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), or commission rules to include state regulations, MICS, Company Internal Control Standards, and other orders of the commission, committed by licensees, their employees or others. . ."
11. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

DISCUSSION

The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner had reasonable grounds to believe that a violation of the MICS had occurred on October 2, 2012. Petitioner did not direct that MGC be notified until October 4, 2012. Petitioner acknowledges that the incident was not promptly reported to MGC, and insists that the company policy should have prevented the delay in notification.

Petitioner's actions or inactions in failing to promptly notify the MGC of an incident involving a security officer accepting a gift from a patron discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated April 8, 2013 to impose a three (3) calendar day suspension against Petitioner is affirmed as a proper and appropriate discipline.

DATED: November 12, 2013



BRYAN W. WOLFORD
Hearing Officer